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April 6, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 12, 2005

Case Number: TSO-0327

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization.<sup>1</sup> The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I find that access authorization should not be restored in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the notification letter included a statement of the derogatory information causing the security concern.

The notification letter cited concerns related to the individual's use of illegal drugs, excessive use of alcohol, and a major depressive disorder. The individual was sent to a DOE consultant

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1/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

psychiatrist for an evaluation, which took place on July 8, 2005. In a report dated July 11, 2005, the consultant psychiatrist diagnosed the individual as alcohol dependent in early fully remission, but not rehabilitated. This constitutes a security concern under 10 C.F.R. § 710.8(J)(Criterion J). The consultant psychiatrist also found the individual was suffering from major depressive disorder recurrent which causes or may cause a significant defect in the individual's judgment or reliability. This represents a security concern under 10 C.F.R. § 710.8(h)(Criterion H). The consultant psychiatrist further found the individual was suffering from substance abuse opioid, cocaine and cannabis, all in early full remission, but not rehabilitated. This constitutes a concern under 10 C.F.R. § 710.8(k)(Criterion K).

The DOE consultant psychiatrist noted the individual maintained that, as of the time of the July 2005 evaluation, he had been abstinent from alcohol and illegal drugs since October 2, 2004, a period of nine months. The consultant psychiatrist recommended that in order to show rehabilitation from the Criteria J and K concerns, the individual should demonstrate abstinence from alcohol and illegal drugs for an additional year from the time of the evaluation,<sup>2</sup> as well as continue with his therapy program, which involved participation in AA and individual counseling. The consultant psychiatrist did not specifically state the rehabilitation necessary with respect to the concerns regarding the individual's major depressive disorder (Criterion H).

The letter also cited an August 2004 domestic violence incident and a September 2004 threat to co-workers at the workplace. Further the letter noted that on August 23, 2000, the individual signed a DOE drug certification form promising that he would not be involved with illegal drugs while holding a DOE security clearance. Nevertheless, the individual illegally used cocaine and [not- prescribed] narcotic painkillers from June 2004 to October 2004. In a personnel security interview of February 17, 2005, the individual admitted that he knowingly violated that drug certification. The letter cites these incidents as giving rise to a security concern under 10 C.F.R. § 710.8(l) (Criterion L).<sup>3</sup>

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2/ This would bring the total abstinence/rehabilitation period to about 21 months.

3/ Criterion L pertains to unusual conduct or is subject to circumstances that tend to show he is not honest, reliable or  
(continued...)

The notification letter informed the individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual testified on his own behalf, and presented the testimony of his wife, his supervisor, two co-workers, his Narcotics Anonymous (NA) sponsor, two therapists (Therapists I and II), and the site psychologist from his workplace. The DOE Counsel presented the testimony of the DOE consultant psychiatrist.

## II. Hearing Testimony and Documentary Evidence

### A. Documentary Evidence Presented at the Hearing

At the hearing the individual presented evidence documenting his attendance at NA meetings for the period January 6, 2006 through March 2006. Individual's Hearing Exhibit B. He also presented the results of numerous alcohol and drug tests performed during the period 2005 through 2005 in connection with his employee assistance program counseling. They were all negative. Individual's Hearing Exhibit A. The individual also submitted a time-line that he prepared showing the dates of key events in his rehabilitation process. Individual's Hearing Exhibit C.

### B. Testimony

#### 1. The Individual

The individual admits that he has alcohol, drug and depression problems. Transcript of Hearing (hereinafter Tr.) at 121. He testified that these problems were brought on by stress on the job

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3/ (...continued)

trustworthy, or that furnish reason to believe he may be subject to pressure, coercion, exploitation or duress, which may cause him to act contrary to the best interests of the national security. Criterion L also includes violation of any commitment or promise upon which the DOE previously relied to favorable resolve an issue of access authorization eligibility.

and stress associated with some family problems, including a very sick child. He stated that when his wife left him in August 2004, he realized that he needed help and began some intensive outpatient treatment. During the month of October 2004, he also had a month-long inpatient treatment program for his alcohol and drug use. He dates his abstinence from drugs and alcohol beginning with his participation in that program. He testified that he is currently entering his 18<sup>th</sup> month of abstinence from illegal drugs and alcohol. Tr. at 211. During the in-patient program, he began participating in Narcotics Anonymous (NA). He testified that he also participates in AA, and individual therapy. On most days of a typical week he participates in some form of activity related to his recovery. Tr. at 161. He believes that his support system is strong and he has confidence in his NA sponsor. Tr. at 168.

The individual testified that he no longer needs alcohol or drugs to cope with stress. Now, he faces stressful situations by reasoning and by talking to his support group about what is happening in his life. Tr. at 166, 174. With respect to his depression, he is using a video-tape treatment program and finds this helpful. Tr. at 158, 160. He therefore believes that he has tools readily in place to cope with stress. He gave as an example of stress the recent death of his grandmother. He testified that even though he was distressed by her death he did not turn to drugs or alcohol. He is able to turn to his therapy group and talk about what is happening in his life. Tr. at 173-74.

With respect to his violation of his 2000 promise to the DOE to refrain from using illegal drugs while holding a security clearance, the individual testified that at that time he was a drug addict and simply had no idea what it would take to keep that promise. He emphasized that he now has the tools in place to refrain from illegal drug use. Tr. at 169-73.

## 2. NA Sponsor

The NA sponsor testified that he has known the individual for about one and one-half years through the NA program. He believed that the individual has not used any illegal drugs or alcohol during that period. Tr. at 67, 69. He confirmed that the individual is deeply committed to the NA program, regularly attends meetings and is an active participant. Tr. at 71-72. He also confirmed that the individual is a volunteer who conducts NA and AA meetings for alcoholics and drug users at a local treatment center. Tr. at 64.

### 3. Therapists

Therapist I testified that she is a licensed clinical social worker specializing in disorders associated with anxiety, depression, family and marital matters. Tr. at 97. She provides "couples counseling" for the individual and his wife. She first saw the individual in September 2005 and has seen him twelve times since then. Tr. at 99. She agrees with the diagnosis of the DOE consultant psychiatrist. Tr. at 100. She indicated that she has observed significant changes in the individual. She testified that he is better able to handle his problems now. These problems include marital issues, irritability, and substance abuse. She was impressed with the changes the individual has made. Tr. at 103-107. She recommended to the individual that he seek help from a therapist who specializes in substance abuse problems, and she noted that he has done so. (See discussion of the testimony of Therapist II, below.) Tr. at 109. She believes that the individual is not currently suffering from depression, but recognizes that he has "anger" issues and a "low frustration threshold." Tr. at 111. However, she also indicated that the individual now has tools for coping with these difficulties. Tr. at 112, 115.

Therapist II testified that he is an alcohol and drug abuse counselor. He is the owner and program director of a local recovery and treatment center. He started meeting with the individual in January 2006. Tr. at 188. Therapist II indicated that the individual was experiencing difficulty coping with stress and needed tools to stay clean and sober. The individual participates in a weekly evening group meeting. According to this therapist the individual is a serious and valuable participant in group sessions. Tr. at 188-94. He described tools that he is teaching the individual. Tr. at 195. He believes the individual should remain in the group program for an additional period, although he could not specify the number of additional months that might be necessary. Tr. at 201. This therapist believes that the individual is a "good way" along in his recovery and has the tools to prevent relapse. Tr. at 198.

### 4. Site Psychologist

The site psychologist conducts fitness for duty examinations at the site where the individual works. Tr. at 78. He had an initial meeting with the individual in November 2004, when he found that the individual was experiencing depression, and alcohol and opioid dependence, in early full remission. The individual had at that

time already undergone some treatment and was therefore returned to the workplace. The site psychologist stated that in connection with the individual's return to the workplace, the individual was required to abstain from all alcohol and illegal drugs. He was placed on twice-weekly breath and urine drug screens, and breath alcohol testing.<sup>4</sup> He was required to attend AA. The site psychologist testified that he saw the individual periodically every 30 or 60 days through the end of the fitness for duty evaluation. His last meeting with the individual was in January 2006, when he found the individual was functioning effectively. Tr. at 78-80. The psychologist testified that the individual is highly motivated in his commitment to sobriety. Tr. at 93. He stated that as a general rule a two year period of sobriety/abstinence is needed for rehabilitation [in a case of alcohol/drug dependence]. Tr. at 93.

#### 5. Personal Witnesses

The individual presented four personal witnesses. These included a coworker, his supervisor, his team leader and his wife. His work colleagues have known him for several years. Tr. at 9 (2 ½ years), 45 (6-7 years), 178 (10 years). They all testified that he is valued and respected employee. Tr. at 11, 14; 58-59; 181. These colleagues also testified that they have seen a change in the individual's personality in the past year, and that he is now able to deal with stress in a more positive and calm manner. Tr. at 13, 54, 182. These witnesses believe that they would be able to tell if the individual resumed drug or alcohol use, and they testified that they have seen no signs of such resumption. Tr. at 14-15, 53. They also believe that the individual would seek their help if he were experiencing difficulties. Tr. at 21, 50, 181. Further, two of the witnesses stated that if they believed he needed assistance, they would seek help for him. Tr. at 19, 53.

The individual's wife testified that she and the individual have been married for 10 years. Beginning in 2004, she noticed that he had a problem with managing his anger and his temper and that he was using drugs and alcohol. When she decided to leave the individual, it prompted him to seek outside help. She testified that after his inpatient treatment he was less irritable and "edgy." Tr. at 25-30. She stated that he is able to relate to her and their children more positively since seeking treatment. Tr. at 37. She indicated that she and the individual attend marital counseling. Through this counseling she has learned how to help support the individual and

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<sup>4</sup>/ The tests were negative. Tr. at 85.

help him cope with his problems. Tr. at 31-32. She testified that he has not used alcohol or drugs since October 2004. She believes that she would know if he had resumed use of those substances because he would become "edgy." Tr. at 33. She also believes that he has the tools now to cope with stressful situations. Tr. at 39.

#### 6. The DOE Consultant Psychiatrist

After listening to the testimony of all the above witnesses, the DOE consultant psychiatrist was convinced that the individual had maintained abstinence for the period since October 2004, and had also attended NA and AA meetings since that time. He was persuaded that the individual is very serious about both his commitment to abstinence and the NA and AA programs. Tr. at 205. He was impressed with the excellent "quality of his treatment." Tr. at 210. He testified that it "was a good sign" that the individual managed his grandmother's death without a relapse. He also believed that the individual had "gone the extra mile" in seeking out treatment. Tr. at 210. The consultant psychiatrist further indicated that by having sought out anger management therapy, the individual had "hit the problem right on the head." Tr. at 210.

However, the consultant psychiatrist still had some reservations about the individual's overall rehabilitation. The consultant psychiatrist referred to his July 2005 evaluation in which he stated that the individual needed to maintain abstinence and continue therapy for another year from that time, for a total of 21 months of abstinence and therapy. The consultant psychiatrist indicated that in retrospect the 21 month recommendation was somewhat short, and that he should have recommended a two year total abstinence period. In this regard, the consultant psychiatrist cited some of the complicating factors for this individual, which include "poly-substance abuse," "co-morbid depression," and a "history of relapses." Tr. at 209-210. Given that, as of the date of the hearing, the individual had completed only 17 months of abstinence and rehabilitation, the consultant psychiatrist believed that the individual needed additional abstinence and treatment. The consultant psychiatrist's view was that the individual had therefore not yet fully completed his rehabilitation program with respect to alcohol and drug abuse.

The consultant psychiatrist testified that the individual had resolved the concerns with respect to his depression. He did not believe that the individual currently needs any treatment for depression, and indicated that the individual has had appropriate treatment and learned coping skills to keep his depression from returning. Tr. at 217-18.

### III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (Case No. VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

### IV. Analysis

The issue in this case is whether the individual has mitigated the Criteria J, H, K and L concerns set forth in the Notification Letter. As discussed below, with the exception of the Criterion H concerns, I find that the individual has not yet resolved the security concerns.

I believe that, as he contends, the individual has been abstinent from alcohol and has refrained from using illegal drugs since October 2004. There is ample evidence to support my finding. The individual's wife confirmed this. The NA sponsor and his therapists testified convincingly in this regard. The site psychologist



confirmed that the individual's drug and alcohol tests have all been negative for a considerable period.

I am also convinced that the individual is participating in NA. This, too, is well-supported. His sponsor confirmed that the individual attends NA meetings at least four or five times a week. The individual has also submitted records of his recent attendance at NA meetings. The individual indicated that he did not keep records of earlier attendance. However, as indicated above, his sponsor confirmed consistent NA participation over a period of about one and one-half years.

The individual's therapists were convinced that the individual is sincere and highly motivated in his recovery. The DOE consultant psychiatrist also believed that the individual had made great progress in his recovery. This is all very much in the individual's favor. I must therefore consider whether, based on this very positive showing, the individual has demonstrated rehabilitation and/or reform.

Although the DOE consultant psychiatrist was impressed with the individual's recovery efforts thus far, he believed that some additional time of abstinence and therapy is necessary. He pointed out that in his original evaluation he believed that the individual needed a total of 21 months of abstinence and rehabilitation. As of the time of the hearing, the individual had had only a total of 17 months. In fact, as discussed above, the DOE consultant psychiatrist testified that he now believes his original 21-month recommendation was too short. He stated that, in retrospect, he should probably have recommended a two-year abstinence/rehabilitation period.

Although I believe the individual has come a long way and has made great progress, I am in the end convinced by the view of the DOE consultant psychiatrist that an additional period of time is necessary in order to resolve the Criterion J and Criterion K security concerns involved in this case. In this regard, I note the testimony of the site psychologist indicating that a two-year rehabilitation period is appropriate.

Further, given the fact that the individual has not yet resolved the concerns regarding his use of alcohol and illegal drugs, I cannot find that he has resolved the Criterion L concern regarding the breach of his promise to the DOE not to use illegal drugs while holding a security clearance.

With respect to the Criterion H security concern involving the individual's depression, I am convinced by the DOE consultant

psychiatrist's testimony that the individual has sufficiently addressed this problem and has appropriate coping mechanisms, should his depression symptoms return. I believe that the individual has resolved that security concern.

#### V. CONCLUSION

As indicated above, I find that the individual has not resolved the Criteria J, K and L concerns set out in the notification letter. I believe that he has resolved the Criterion H concern.

It is therefore my decision that restoring this individual's access authorization is not appropriate at this time.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton  
Hearing Officer  
Office of Hearings and Appeals

Date: April 6, 2006